

United States
Circuit Court of Appeals

For the Ninth Circuit. Y

G. M. STANDIFER CONSTRUCTION
CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

DEC - 3 1934

PAUL F. GIBBEN

United States
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

CHAS. E. McCULLOCH, Esq.,

For Respondent:

W. F. WATTLES, Esq.,

E. M. WOOLF, Esq.,

Docket No. 51636

G. M. STANDIFER CONSTRUCTION CORP.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES:

1930

Dec. 29—Petition received and filed. Taxpayer notified. (Fee paid)

Dec. 29—Copy of petition served on General Counsel.

1931

Feb. 9—Answer filed by General Counsel.

Feb. 13—Copy served—placed on Circuit Calendar.

1933

Aug. 5—Hearing set 9/25/33, Portland, Oregon.

Aug. 16—Motion for production of records and documents filed by General Counsel.

Aug. 18—Order to produce certain written documents entered.

1933

- Oct. 2—Hearing had before Mr. Arundell. Submitted. Stipulation of facts filed. Briefs due Dec. 1, 1933.
- Oct. 23—Transcript of hearing 10/2/33 filed.
- Dec. 1—Order that time for filing briefs be extended to Dec. 11, 1933 entered.
- Dec. 1—Brief filed by General Counsel.
- Dec. 4—Proposed findings of fact and brief filed by taxpayer.

1934

- Mar. 27—Opinion rendered—C. Rogers Arundell. Decision will be entered under Rule 50.
- May 7—Motion for decision under Rule 50 filed by General Counsel.
- May 8—Hearing set June 6, 1934 under Rule 50.
- June 6—Hearing had before Mr. C. R. Arundell. Division 7, on settlement under Rule 50—not contested—referred to Mr. Arundell for decision.
- June 7—Decision entered—Division 7.
- Sept. 5—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.
- Sept. 5—Proof of service filed by taxpayer.
- Sept. 26—Praecipe filed.
- Sept. 26—Proof of service filed. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 51636

G. M. STANDIFER CONSTRUCTION COR-
PORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:E:Aj-HOB-15545-60D, dated November 1, 1930, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized under the laws of Oregon, with principal office at 1016 Public Service Building, Portland, Oregon.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on November 1, 1930.

3. The taxes in controversy are income taxes for [2] the calendar year 1928, and for \$8,605.20.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent erred in his determination that the petitioner received income in the calendar year 1927 amounting to \$63,943.14 on account of

payroll charges accrued during 1921 and prior years, liability for the payment of which was discharged by operation of the statute of limitations in 1924 and years prior thereto.

(b) The respondent erred in his determination that petitioner had a net income for 1927 of \$6,945.19, or any sum whatsoever, and in his failure to find that petitioner sustained a net loss from its business in 1927 of \$68,709.92, as reported by petitioner in its return.

(c) The respondent erred in his refusal to permit the petitioner to deduct from its gross income for the calendar year 1928 the net loss sustained by petitioner in 1927, namely, \$68,709.92.

(d) The respondent erred in his determination of a deficiency in petitioner's tax liability for the year 1928 of \$8,605.20, or any sum whatsoever.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner operated shipyard plants at [3] Vancouver, Washington, during the years 1917 to 1921, inclusive. The petitioner discontinued all active shipbuilding operations in the year 1921, although during the next year or two thereafter it continued in business incident to the dismantling and disposition of its plant and equipment.

(b) During the years 1917 to 1920, inclusive, certain payroll items were accrued on the petitioner's books for labor performed in its shipyard plant at Vancouver, Washington. Included in the accrued payroll charges were items aggregating \$63,943.14,

which were never called for by the employees entitled to such wages. Substantially all of these unclaimed and unpaid payroll items represented additional compensation under the so-called Macy Awards. In many cases employees entitled to such additional compensation failed to call for their checks, although such checks were actually issued in the years prior to 1921 and were held by petitioner for them subject to the order of such respective employees.

(c) Section 159, Remington's Compiled Statutes of Washington, 1922, provides that the period for the commencement of actions shall be as follows:

“Within three years,—

* * *

3. An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

* * *.”

Under this statute the petitioner was entitled to defend against any claims for said unclaimed payroll items after [4] three years from the date liability therefor was incurred by the petitioner. Petitioner's liability for the last of such unpaid payroll items included in said total of \$63,943.14 expired during the year 1924.

(d) The petitioner received no income during any year on account of the aforesaid accrued payroll items, and particularly received no income

therefrom during the calendar year 1927 or 1928. If petitioner did in fact receive any income by virtue of the defense of the statute of limitations against its liability for said accrued payroll charges, such income was received during 1924 and years prior thereto.

(e) Petitioner sustained a net loss in its business during the year 1927 of \$68,709.92, and is entitled to a deduction for such net loss from its gross income for the calendar year 1928. Petitioner's net income for 1928 was \$6,171.29.

WHEREFORE, the petitioner prays that this Board may hear the proceeding and

(a) Determine that petitioner receive no income in the year 1927 or in the year 1928 on account of unpaid payroll charges accrued in 1921 and prior years, liability for the payment of which was discharged by operation of the statute of limitations in 1924 and years prior thereto.

(b) Determine that petitioner sustained a net loss in 1927 of \$68,709.92, and that petitioner is entitled to deduct such net loss from its income for the year 1928. [5]

(c) Determine that there is no deficiency in petitioner's income tax liability for the year 1928.

CHARLES E. McCULLOCH

IVAN F. PHIPPS,

Counsel for Petitioner,

1410 Yeon Building,

Portland, Oregon [6]

State of Oregon,
County of Multnomah.—ss.

L. B. MENEFFEE, being first duly sworn, on oath says that he is the Vice President of G. M. Standifer Construction Corporation, the petitioner above named, and is authorized to verify this petition in its behalf; that he has read the foregoing petition and knows the contents thereof, and the facts stated therein are true as he verily believes.

L. B. MENEFFEE.

Subscribed and sworn to before me this 23rd day of December, 1930.

(Seal)

J. R. OSBORN,

Notary Public for Oregon.

My commission expires March 30, 1932. [7]

NP 2-26-28

Treasury Department
WashingtonOffice of
Commissioner of Internal Revenue

Nov. 1, 1930.

Address reply to
Commissioner of Internal Revenue
and refer toG. M. Standifer Construction Corporation, 1016
Public Service Building, Portland, Oregon.

Sirs:

You are advised that the determination of your tax liability for the years 1927 and 1928 discloses a deficiency of \$8,605.20 as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926 and section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability for the years in which a deficiency is disclosed.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D.C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency

and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNETT,

Commissioner.

By (Signed) J. C. WILMER,

Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870

EXHIBIT A [8]

STATEMENT

IT:E:Aj

HOB-15545-60D

In re: G. M. Standifer Construction Corporation.

1016 Public Service Building.

Portland, Oregon.

Year	Deficiency
1927
1928	\$8,605.20
	<hr/>
	\$8,605.20

Due consideration has been given to your protest dated September 27, 1930, against the proposal to

include as income in the year 1927 accrued pay roll amounting to \$63,943.14 charged to operations during prior years. As the statute of limitations as to such accounts has operated to bar their collection by the claimants, or by the parties to whom due, it is held that they should be included in income for 1927, the year the corporation surrendered its charter, and began liquidation.

	1927	
Net income reported		(\$68,709.92)
Add:		
1. Accrued pay roll deducted as expense in prior years	\$63,943.14	
2. Interest on United States obligations	11,711.97	75,655.11
Net income		\$ 6,945.19
Less:		
Exempt income shown above		11,711.97
Taxable income		None

Explanation of Adjustments

1. It is held that the accrued pay roll representing charges to operations in prior years and deducted in prior years, the liability for the payment of which has been discharged by operation of the statute of limitations, is a proper credit to the profit and loss account for the year 1927. The net loss claimed for 1927 has accordingly been reduced by this item, amounting to \$63,943.14.

2. Self-explanatory. [9]

1928

Net income reported	\$ 6,171.29
Add:	
1. Net loss 1927 deducted on line 22(b) of return	68,709.92
	<hr/>
Net income adjusted	\$74,881.21

Explanation of Adjustment

1. In view of the computation for 1927 shown above, it is apparent that there was no net loss for that year deductible from gross income for the year 1928.

Tax Computation

Net income	\$74,881.21
Tax at 12%	\$ 8,985.75
Previously assessed, Account #400970	380.55
	<hr/>
Deficiency	\$ 8,605.20

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: United States Board of Tax Appeals.
Filed Dec. 29, 1930. [10]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau

of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in Paragraph 1.

2. Admits the allegations contained in Paragraph 2.

3. Admits the allegations contained in Paragraph 3.

4(a)&(b). Denies that he erred in determining the tax set forth in said notice of deficiency, and further denies that he erred as alleged in Paragraphs 4(a) and 4(b) of the petition.

(c) Denies specifically that the petitioner sustained a net loss during the year 1927, in any sum whatsoever.

(d) Denies the matter set forth in Paragraph 4(d).

5.(a) Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5(a) of the petition and therefore denies the same.

(b) Denies each and every material allegation contained in Paragraph 5(b) of the taxpayer's petition which is inconsistent with or contrary to the determination of the respondent as set forth in the statement accompanying the notice of deficiency, which is attached to and made a part of the taxpayer's petition, as Exhibit A. [11]

5.(c) Denies each and every material allegation contained in Paragraph 5(c) of the taxpayer's peti-

tion which is inconsistent with or contrary to the determination of the respondent as set forth in the statement accompanying the notice of deficiency, which is attached to and made a part of the taxpayer's petition, as Exhibit A.

(d) Denies the matter set forth in Paragraph 5(d) of the petition.

(e) Denies the matter set forth in Paragraph 5(e) of the petition.

6. Denies generally and specifically each and every material allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

JOHN H. PIGG,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals.
Filed Feb. 9, 1931. [12]

[Title of Court and Cause.]

STIPULATION OF FACTS.

The following facts are stipulated by the parties hereto:

1. The only dispute in this case is whether the respondent, hereinafter called the "Commissioner", erred in adding to the income of the petitioner for the year 1927 the sum of \$63,943.14 not reported as income by the petitioner in its return for that year.

2. The petitioner is an Oregon corporation. It was organized in 1917 to engage in the business of building wooden ships and steel ships. Its building operations began in 1917 and ended in 1921. During that period it had three ship yards, one at North Portland, in the State of Oregon, which was destroyed by fire in 1918, and two at Vancouver, in the State of Washington, one a yard for building wooden ships and the other a yard for building steel ships.

3. Up to the early part of 1920 the operations of the petitioner were largely confined to building ships for the United States Shipping [13] Board Emergency Fleet Corporation, the last of such ships being delivered in February, 1920. In the latter part of the year 1919 the petitioner began work on private contracts, the last of such contracts being completed in May, 1921.

4. The item of \$63,943.14 is described as follows in the statement attached to the deficiency letter:

“Accrued pay roll deducted as
 expense in prior years \$63,943.14”,

and the following explanation was given with respect to said item:

“It is held that the accrued pay roll representing charges to operations in prior years and deducted in prior years, the liability for the payment of which has been discharged by operation of the statute of limitations, is a proper credit to the profit and loss account for the year 1927. The net loss claimed for 1927 has accordingly been reduced by this item, amounting to \$63,943.14.”

5. The item of \$63,943.14 was made up of three items, as follows:

(a) Unpaid increased wages, Contract 10,	\$22,957.41
(b) Unpaid increased wages, wooden yard,	3,993.68
(c) Vouchers payable account,	36,992.05
	<hr/>
Total	\$63,943.14

6. Contract No. 10 of the petitioner was a contract with the Nafra Company. It provided for the construction of five steel ships. Construction was begun in the fall of 1919, and the last boat was delivered shortly after June 1, 1920. In February, 1920, there was a sharp wage controversy in the Standifer plant, culminating in a strike of the employees. After considerable negotiation the strike

was settled on the basis of an increased wage of eight and a fraction [14] cents per hour, which settlement was made retroactive. The payrolls for this contract ran to many hundreds of thousands of dollars. The agreed increased wages likewise ran to a large figure. The item of \$22,957.41 represents the amount of the increased wages accrued but which had never been called for by employees. These wages became due in 1920. They were included as a part of the cost of the construction of the five boats covered by Contract No. 10, and thus were used to reduce petitioner's gross income. All of the deliveries of boats under Contract 10 were in the year 1920, and the entire operations under Contract 10 were reported in the income tax return for that year. No checks representing these uncalled for wage items of \$22,957.41 were ever made out. Only two payments were made to employees after the year 1922 on account of increased wages on Contract 10. These two payments were as follows:

September 30, 1923	\$10.68
April 24, 1924,	14.40

There was no dispute as to the amount of the increased wages. They were not paid for the reason that they were not called for.

7. The item of "Unpaid increased wages, wooden yard \$3,993.68" represented increased wages during the latter part of the year 1919 and in the early part of the year 1920. Only two items or accruals fell in the year 1921. They were as follows:

January 31, 1921	\$70.64
February 28, 1921.	5.28

These increased wage items aggregating \$3,993.68 were all incurred in connection with peace-time work on Contract No. 10, a portion of the joiner work on Contract No. 10 ships being done at the Vancouver wooden [15] yard. It is possible that a few of the items represent wages earned after June 30, 1920. All of the increased wage items aggregating \$3,993.68 were taken as expense items in the year 1920, with the possible exception that the two items of \$70.64 and \$5.28, respectively, may have been taken as expense in the year 1921. No checks were ever written up or issued for these items. There was no dispute as to the amount of the items. They were not paid for the reason that they were not called for by the employees. The last payment of increased wages in the wooden yard out of the "Unpaid increased wages, wooden yard" account was made in January, 1923. It was in the amount of \$26.50. The balance in this account after the payment in January, 1923, was the \$3,993.68 aforesaid.

8. All of the unclaimed wage items of \$22,957.41 and \$3,993.68 were for work performed wholly within the State of Washington.

9. The item "Vouchers payable account, \$36,992.05" arose as follows:

The petitioner carried a "Vouchers payable account" to which were credited from time to time various sums representing liabilities incurred in

connection with petitioner's ship building operations but not yet paid. At January 1, 1922, the total debits and credits to this account were \$447,201.95 and \$530,713.74, respectively. The following is a correct transcript of that account from January 1, 1922, to December 31, 1924: [16]

Date	Items	Folio	Debits	Date	Items	Folio	Credits
1922				1922			
Dec.	Standard Oil Co.	VR 445	15.00	Dec.		VR 445	625.00
"		CB 212	28,253.20	"		" "	5,375.37
1923				1923			
Apl		" 215	106,590.85	"		" 446	2,025.00
Dec.		J 142	6,612.09	"		" "	705.37
"	Balance		48,156.50	Apl.		" 446	82,681.73
				Feb'y 28		J 140	14,703.38
			<u>636,829.59</u>				<u>636,829.59</u>
1924				1924			
Nov. 5	Pacific Marine Iron Works	CB 7	11,164.45	Jan. 1	Balance (P. M. I. Wks)		48,156.50

Most of the credits to the above account had been charged to income. If called as a witness R. V. Jones, who was petitioner's vice president and plant manager during the years in question, would testify that it is not definitely known one way or another and is not now ascertainable whether any charge was made to income and taken as a deduction in previous years on account of litigation with the Pacific Marine Iron Works, as hereinafter set forth. This litigation had arisen under the following circumstances. In connection with one of its wooden ship contracts for the United States Shipping Board Emergency Fleet Corporation the petitioner had entered into a contract in the year 1918 with the Pacific Marine Iron Works for the construction

of six vertical triple expansion marine engines with boilers. Various controversies arose with respect to this contract. The Pacific Marine Iron Works made claims for changes and extras, for suspension and cancellation expense, and for increased wages ordered by the government's labor adjustment board. In 1921 the Pacific Marine Iron Works sued the petitioner for \$48,156.50. On November 5, 1924, the petitioner paid the Pacific Marine Iron Works the sum of \$11,164.45 in full settlement of said [17] suit. The credit balance in the "Vouchers payable" account after the payment on November 5, 1924, of the sum of \$11,164.45 in settlement of this litigation was \$36,992.05. This balance together with the hereinbefore mentioned items of unclaimed wages, the three items together aggregating \$63,943.14, have been treated by the respondent as income to the petitioner during the year 1927.

10. The petitioner kept its books and filed its returns for all years on the accrual basis of accounting.

11. The petitioner's income tax returns and books of accounts for the years 1917 to 1922, inclusive, were the subject of many months of investigation in the field, and also in the Commissioner's office at Washington. After three or four months field work there was a revenue agent's report of more than 400 pages. The taxpayer and the Commissioner were in controversy for several years over the taxes for the years 1918 to 1922, inclusive. The opinion of the United States Board of Tax Appeals, deciding that controversy was promul-

gated on June 30, 1926 (4 B. T. A 525), and its decision or final order of redetermination was entered on May 26, 1927. No appeal was taken from that decision, which accordingly became final on November 26, 1927.

12. Sometime in June, 1927, the petitioner paid to the Collector of Internal Revenue the final balance of tax owing to the United States for the years 1918 to 1922, inclusive, as determined by final order of the United States Board of Tax Appeals in the above mentioned cause, docket No. 5550, and on October 6, 1927, paid the sum of \$34,354.52 as an offer in compromise of the interest liability on said taxes, which offer was accepted on March 20, 1928.

13. During 1927 the petitioner made the following distributions or payments to persons who were either directly or through various holding and investment companies the beneficial owners of almost all of petitioner's capital stock: [18]

G. M. Standifer	\$62,780.00
L. B. Menefee	41,610.00
R. V. Jones	41,610.00
	<hr/>
Total	\$146,000.00

These payments were in substantial proportion to beneficial stock ownership. The amounts paid were thereafter carried or listed upon the books of the petitioner as assets in an account entitled "Advances to Stockholders." On October 8, 1928, Standifer, Menefee and Jones, to enable the corporation to meet certain expenses, paid into the corporation

\$8,750.00 in proportion to the payments to them in 1927. The amounts so paid to the corporation in 1928 were credited against the respective accounts of said persons under the "Advances to Stockholders" account. No part of the balance of \$137,250.00 has ever been repaid to the corporation, but at all times has been retained by the said Standifer, Menefee, and Jones.

14. Pursuant to resolutions of petitioner's stockholders and directors adopted on July 2, 1927, the petitioner on August 30, 1927, filed with the Corporation Commissioner of the State of Oregon a certificate of dissolution, and on said date said Corporation Commissioner issued his certificate dissolving said corporation. By statute of the State of Oregon a corporation remains in existence for five years after the issuance of a certificate of dissolution for the purpose of winding up its affairs. (Oregon Laws, 1927, Chapter 340, page 445; Oregon Code, 1930, Section 25-221.)

15. At the end of the calendar year 1926, the petitioner had assets in the amount of \$428,086.75 (exclusive of good will), included in which amount were United States Liberty Bonds of a par value in excess of \$350,000.00, and liabilities (exclusive of capital stock and surplus) of less than \$200,000.00.

16. On December 31, 1927, the petitioner had assets as follows: [19]

Cash	\$7,579.79
Notes receivable	5,126.62
Accounts receivable	31,827.58

These amounts were in addition to or without taking into account the \$146,000.00 carried or listed on petitioner's books in the account "Advances to Stockholders." At said date the petitioner's records showed unclosed liability accounts of \$155,073.15, which included the above mentioned items aggregating \$63,943.14.

17. The petitioner's petition shall be deemed to have been amended to conform to this stipulation of facts.

DATED at Portland, Oregon, October 2, 1933.

(s) CHARLES E. McCULLOCH,

(s) IVAN F. PHIPPS,

Attorneys for G. M. Standifer
Construction Corporation.

(s) E. BARRETT PRETTYMAN,

General Counsel, Bureau of
Internal Revenue.

By

Attorney for Respondent.

[Endorsed] United States Board of Tax Appeals.
Filed at Hearing Oct. 2, 1933. [20]

[Title of Court and Cause.]

Docket No. 51636. Promulgated March 27, 1934.

1. Wages of employees accrued and deducted from income but unclaimed by the employees, held properly restored to income in the year in which petitioner filed certificate of dissolution

and made substantial distributions to its stockholders. Following Chicago Rock Island & Pacific Ry. Co., 13 B.T.A. 988.

2. An amount was set up on petitioner's books prior to 1924 in a so-called vouchers payable account, which in substance was a reserve for contingent liability on a claim then being litigated. The claim was settled in 1924 by petitioner paying a smaller sum than the amount of the reserve. It does not appear that the amount of the reserve was ever used by petitioner to reduce income. Held, that the balance in the account after settlement of the claim, if income in any year, was income of the year of settlement and not in 1927 when petitioner was dissolved.

CHARLES E. McCULLOCH, Esq., for the petitioner.

WARREN F. WATTLES, Esq., for the respondent.

OPINION

Arundell: The respondent determined deficiencies in petitioner's income tax for 1928 in the amount of \$8,605.20. The deficiency arises from respondent's disallowance of a portion of the net loss claimed to have been sustained in 1927. The facts were stipulated and we adopt, by reference, the stipulation as our findings of fact.

The question for decision is whether the following items, as they are designated in the stipulation, constituted income for the year 1927:

Unpaid increased wages, Contract 10	\$22,957.41
Unpaid increased wages, wooden yard	3,993.68
Vouchers payable account	36,992.05
	<hr/>
Total	63,943.14

The two items of "unpaid increased wages" will be considered together. These items are made up of amounts of increased wages [21] granted petitioner's employees in 1920 when petitioner was engaged in the construction of vessels under private contracts. It had previously constructed vessels for the United States Shipping Board Emergency Fleet Corporation. Some of the increased wages here involved were retroactive to 1919, but the total amount was used to reduce petitioner's gross income for 1920 either as cost of construction or as expenses, with the possible exception of two items, \$70.64 and \$5.28, which accrued in 1921, and these according to the stipulation "may have been taken as expenses in 1921." No checks were ever made out for the unpaid increased wages. There was no controversy as to the amounts of the increased wages: they were not paid because the employees never called for them. Only three payments were made after 1922—two in 1923, totaling \$37.18, and one in April 1924, in the amount of \$14.40. All of the unclaimed wage items here involved were for work performed wholly in the State of Washington.

The other item, "Vouchers payable account, \$36,992.05," represents a credit balance in that account after petitioner's settlement of a claim by the Pa-

cific Marine Iron Works. In 1918 the Iron Works engaged to construct marine engines for petitioner. Various controversies arose with respect to the contract, the Iron Works making claims for changes and extras, for suspension and cancellation, and for increased wages ordered by a labor board. In 1921 the Iron Works sued petitioner for \$48,156.50. Sometime prior to 1924 petitioner credited the amount of \$48,156.50 to its vouchers payable account. On November 5, 1924, petitioner paid the Iron Works \$11,164.45 in settlement of its claims, and thereupon charged that amount to its vouchers payable account, leaving a balance therein of \$36,943.14.

The vouchers payable account was an account to which petitioner credited from time to time various sums representing liabilities incurred in connection with its ship-building operations, but not yet paid. Most of the credits to that account were charged to income, but it is not definitely known and is not now ascertainable whether or not any charge was made to income and taken as a deduction in previous years on account of the Pacific Marine Iron Works item.

Petitioner has not been engaged in any construction work since 1921. In June 1927 it paid to the collector of internal revenue the final balance of taxes owing to the United States for the years 1918 to 1922, inclusive, as determined by this Board (4 B. T. A. 525) and submitted an offer in compromise of interest, which was accepted on March

20, 1928. In 1927 it distributed to its stockholders \$146,000, which amount was credited to an account designated "Advances to Stockholders." [22]

On July 2, 1927, petitioner filed a certificate of dissolution with the Corporation Commissioner of the State of Oregon, and that official on the same date issued his certificate dissolving the corporation. Under Oregon law a corporation remains in existence for five years after issuance of certificate of dissolution, for the purpose of winding up its affairs.

Petitioner's books of account were kept and its returns filed for all years on the accrual basis. At the close of 1927 its liability accounts contained the items here in dispute, aggregating \$63,943.14, which amount respondent added to income for that year, thus determining a net income instead of a net loss as claimed by petitioner.

The question concerning the inclusion in income of unclaimed wages is controlled by the decisions in *Chicago, Rock Island & Pacific Ry. Co.*, 13 B. T. A. 988; affirmed on this point, 47 Fed. (2d) 990; and *Charleston & Western Carolina Ry. Co.*, 17 B. T. A. 569; *affd.*, 50 Fed. (2d) 342. In the first case cited amounts deducted for wages and remaining unclaimed for two years were credited to profit and loss, and in the other case unclaimed wages due employees for 1921 were credited to profit and loss in December 1924. In both cases it was held that the amounts thus restored to profit and loss were to be included in income for the year in which the resto-

ration was made. No valid distinction can be taken between those cases and the present one on the ground that this petitioner failed to enter the items in an income account. Bookkeeping entries do not make income, but neither does a failure to record an item as income permit it to escape taxation when the time arrives that it represents income. In our opinion the proper time for inclusion in this case was the year 1927, when petitioner filed its certificate of dissolution and distributed a substantial portion of its assets to its stockholders. It is stipulated that at the beginning of 1927 petitioner's assets were \$428,086.75 and liabilities less than \$200,000, while at the end of the year its assets amounted to but \$44,533.99 and liabilities \$155,073.15, including items making up the \$63,943.14 involved here. It was thus obviously engaged in the liquidation of its affairs in that year, and a fund previously held as impressed with an obligation and becoming in that year available for other uses is properly an item of income.

Petitioner argues that if the unclaimed wages were income to it in any year it was when the statute of limitations ran against them. The applicable statute, says petitioner, was that of the State of Washington, which provides a three-year period for commencement of actions on contracts not in writing. We think this has no bearing on the question before us. Local statutes are not decisive of what constitutes income, *Burnet v. Harmel*, 287 U. S. 103, nor what deduc- [23] tions may be taken,

Weiss v. Wiener, 279 U. S. 333. We are of course bound to follow established state rules of property, Warburton v. White, 176 U. S. 484, but there is no property right in a statute of limitations which affects the remedy alone and not the obligation. Campbell v. Holt, 115 U. S. 620. So it has been held that local statutes of limitations barring collection of debts are not sufficient to constitute ascertainment of worthlessness. Leo Stein, 4 B. T. A. 1016; Ralph H. Cross, 20 B. T. A. 929; *affd.*, 54 Fed. (2d) 781.

We accordingly hold that it was proper to include the unclaimed wage items in petitioner's income for 1927.

The other item, growing out of the litigation with the Pacific Marine Iron Works, is somewhat different from the unclaimed wage items. This item was in substance a reserve, and, if allowable as a deduction at the time set up, the balance remaining in it after settlement of the claim which prompted its creation was income in the year of settlement, 1924. Unexpended balances in reserve accounts are income "in the year in which the reason for which they were created ceased to exist." Peabody Coal Co., 18 B. T. A. 1081. We further held in the Peabody Coal Co. case that reserves of a kind that are not recognized as constituting allowable deductions should be restored to income in the year in which they were set up. Consequently, whether the vouchers payable account was a correct account or an erroneous account, the amount remaining unexpended

at the close of 1924 was income in that or a prior year rather than the year 1927 as held by the respondent.

The theory underlying the restoration of reserve balances to income, like that of recoveries on losses for prior years (*Burnet v. Sanford & Brooks Co.*, 282 U. S. 359) and collections on debts previously deducted as worthless (*Askin & Marine Co.*, 26 B. T. A. 409; *affd.*, 66 Fed. (2d) 776), is that by taking the deductions in the earlier years the taxpayer benefited through a reduction of its taxable income, and subsequent events demonstrate that there was in fact no loss, even though honest belief so indicated at the time. In this case it is at least doubtful whether petitioner had the benefit of a deduction of the Iron Works item in any prior year. As stated above, the item was in substance a reserve, and as it was set up to cover a contingent liability the respondent in all probability would not allow it either as an item of cost of goods sold or as an expense deduction. Since the closing of petitioner's tax liability for earlier years its books have been destroyed. But prior to such destruction, according to the stipulation, petitioner's returns and books of account were the subject of many months of investigation in the field and also in the respondent's office at Washington; that as a result of three or four months of field work a revenue agent's report of [24] more than 400 pages was prepared; that petitioner and respondent were in controversy for several years over the taxes for the years 1918 to

1922, inclusive. Deficiencies proposed by the respondent were litigated before this Board. It is highly improbable that throughout these investigations, controversies, and litigation the Iron Works item, if claimed as a deduction by petitioner, would escape the notice of the respondent. The probabilities are the other way. Had the item been used by petitioner to reduce gross income it would have been detected somewhere along the line and challenged by the respondent and there would be a record of it available to and capable of production by the respondent.

It is accordingly our view that from whatever angle the Pacific Marine Iron Works item is considered, it was improper to restore the unexpended balance to 1927 income.

Decision will be entered under Rule 50. [25]

United States Board of Tax Appeals

Docket No. 51636

G. M. STANDIFER CONSTRUCTION
COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

This proceeding came on regularly for hearing on the respondent's proposed recomputation. No objection thereto has been entered by the petitioner, and in accordance with the respondent's proposal, it is

ORDERED and DECIDED that there is a deficiency in income tax for the year 1928 in the amount of \$4,999.57.

Enter:

[Seal] (Signed) C. ROGERS ARUNDELL,
Member.

Entered Jun. 7, 1934. [26]

[Endorsed]: Entered Jun. 7, 1934. [26]

United States Circuit Court of Appeals
for the Ninth Circuit

.....Term, 1934

No.

G. M. STANDIFER CONSTRUCTION
CORPORATION, a corporation,
Petitioner and Appellant,

v.

GUY T. HELVERING, COMMISSIONER OF
INTERNAL REVENUE,
Respondent and Appellee.

PETITION FOR REVIEW OF DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The above named petitioner, G. M. STANDIFER
CONSTRUCTION CORPORATION, in support of
this its petition, filed pursuant to the provisions of
Section 1001 of the Revenue Act of 1926, as
amended, for the review of the decision of the
United States Board of Tax Appeals rendered June
7, 1934, redetermining a deficiency in the income
taxes of the petitioner for the calendar year 1928,
in the amount of \$4,999.57, respectfully shows to
this Honorable Court as follows: [27]

I.

STATEMENT OF THE NATURE OF THE
CONTROVERSY.

The Commissioner of Internal Revenue, by his notice of deficiency dated November 1, 1930, to the above named petitioner, asserted a deficiency in the petitioner's income taxes for the calendar year 1928 in the amount of \$8,605.20. Thereafter and within the time prescribed by law, the petitioner filed with the United States Board of Tax Appeals its petition for the redetermination of such deficiency. The proceeding was heard at Portland, Oregon, on October 2, 1933. All of the facts were stipulated in writing. Thereafter and on March 27, 1934, the Board made its findings of fact and promulgated its opinion approving in part the determination of the Commissioner. Thereafter and on June 7, 1934, the Board entered a final order and decision redetermining a deficiency in the petitioner's income taxes for the year 1928 in the amount of \$4,999.57.

The issue presented by this petition for review is whether the Commissioner of Internal Revenue was correct in disallowing as a deduction from 1928 income the net loss claimed by the petitioner to have been sustained by it for the year 1927. The answer to this question depends on whether certain wages of employees, aggregating \$26,951.09, accrued and deducted from petitioner's income in the years 1919 to [28] 1921, inclusive, but never claimed by the em-

ployees, constituted income to the petitioner for the year 1927.

THE FACTS.

The petitioner, an Oregon corporation, was engaged in the shipbuilding business from 1917 to 1921. A considerable part of the petitioner's operations consisted of the building of ships for the United States Shipping Board Emergency Fleet Corporation. In February, 1920, there was a sharp wage controversy in the petitioner's plant, culminating in a strike of the employees. After considerable negotiation the strike was settled on the basis of an increased wage and the settlement was made retroactive. Checks covering the retroactive increases of wages were made out but, to the extent of \$26,951.09, were never called for by the employees entitled to them. Substantially all of these unclaimed wages represented wages accrued in 1919 and 1920, only \$75.92 being applicable to the year 1921. All of these unclaimed wage items represented liabilities of the company accrued in the State of Washington.

The statute of limitations with respect to the liability of the petitioner for the payment of these unclaimed wages, aggregating \$26,951.09, expired three years after the liabilities were incurred. The petitioner's liability for payment of these unclaimed wages expired not later than 1923, [29] with respect to all but \$75.92 of the amount determined by the Board to have represented income to the petitioner in 1927, and as to the said sum of \$75.92 the statute of limitations expired in 1924.

Pursuant to resolutions of the petitioner's stockholders and directors, adopted July 2, 1927, the petitioner on August 30, 1927, filed with the Corporation Commissioner of Oregon a certificate of dissolution. Under the Oregon statutes the petitioner remained in existence for five years after the date of issuance of the Corporation Commissioner's certificate of dissolution, namely, August 30, 1927, for the purpose of winding up its affairs. The petitioner was not liquidated during the year 1927, for on December 31 of that year it had assets aggregating \$190,533.99, consisting of the following:

Cash,	\$ 7,579.79
Notes receivable,	5,126.62
Accounts receivable,	31,827.58
Accounts receivable from stockholders,	146,000.00

On December 31, 1927, the petitioner still carried on its books unclosed liability accounts amounting to \$155,073.15, which included the above mentioned unclaimed wage items aggregating \$26,951.09.

There is no dispute regarding the facts involved in this case. The only question is whether, under the stipulated facts, the petitioner is to be charged with the [30] receipt of income in 1927 in the amount of the unclaimed wage liability remaining on the company's books because the petitioner was dissolved in that year, thus reducing the net loss to be carried forward to 1928.

II.

DESIGNATION OF COURT OF REVIEW.

Petitioner is an Oregon corporation, with its principal place of business in the City of Portland, Oregon. It made its return of annual net income for the year 1928 to the Collector of Internal Revenue at Portland, Oregon. The petitioner, being aggrieved by the said findings of fact, opinion, decision and final order of the United States Board of Tax Appeals, seeks a review thereof in accordance with the provisions of the Revenue Act of 1926, as amended, by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue at Portland, Oregon.

III.

ASSIGNMENTS OF ERROR.

The petitioner, as a basis for review, makes the following assignments of error:

1. The United States Board of Tax Appeals erred in deciding and holding that the petitioner received income upon [31] its dissolution in 1927, in the amount of certain unclaimed wages, in respect of which the statute of limitations expired in 1923 and 1924.

2. The Board erred in deciding and holding that the petitioner's net loss for 1927, to be carried forward as a deduction from petitioner's income for 1928, was \$30,046.86, or any sum whatever less than

\$68,709.92, as reported by petitioner in its 1928 return.

3. The Board erred in rendering its decision in favor of the respondent and against petitioner for a deficiency of \$4,999.57 in petitioner's income taxes for said year 1928.

WHEREFORE, your petitioner prays that this Honorable Court may review the said findings, opinion, decision and final order of the United States Board of Tax Appeals and reverse and set aside the same, and that the Clerk of the said Board be directed to transmit and deliver to the Clerk of the above entitled Court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review and as required by the Rules of said Court and the statutes made and provided.

G. M. STANDIFER CONSTRUCTION CORPORATION,

By CHARLES E. McCULLOCH,
IVAN F. PHIPPS,

Its attorneys,

1410 Yeon Building,

Portland, Oregon. [32]

State of Oregon,

County of Multnomah—ss.

I, L. B. MENEFEE, being first duly sworn, on oath say that I am vice-president of G. M. STANDIFER CONSTRUCTION CORPORATION, the petitioner and appellant above named, and that as such officer I am authorized to verify the foregoing

petition for review; that I have read the said petition and know the contents thereof, and the facts set forth therein are true, as I verily believe; that the said petition is filed in good faith and not for purposes of delay.

L. B. MENEFEE

Subscribed and sworn to before me this 31st day of August, 1934.

[Notarial Seal]

J. R. OSBORN

Notary Public for Oregon.

My commission expires March 24, 1936.

[Endorsed]: Filed Sept. 5, 1934. [33]

United States Board of Tax Appeals

Docket No. 51636

G. M. STANDIFER CONSTRUCTION
CORPORATION, a corporation,

Petitioner.

vs.

GUY T. HELVERING, Commissioner of Internal
Revenue,

Respondent.

NOTICE OF FILING PETITION FOR REVIEW
OF DECISION OF THE UNITED STATES
BOARD OF TAX APPEALS.

To the above-named respondent, and to ROBERT
H. JACKSON, General Counsel, Bureau of In-
ternal Revenue, attorney for respondent:

PLEASE TAKE NOTICE that on the 6th day of

September, 1934, the undersigned will present to this Board and file with the Clerk thereof the petition of G. M. Standifer Construction Corporation, a copy of which is annexed hereto, for the review, by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision and final order of the Board [34] in the above entitled proceeding, entered upon the records of said Board on the 7th day of June, 1934.

Dated at Portland, Oregon, this 30th day of August, 1934.

CHARLES E. McCULLOCH
IVAN F. PHIPPS

Counsel for Petitioner,
1410 Yeon Building,
Portland, Oregon.

Service of the foregoing Notice and copy of Petition for Review is hereby accepted this 5th day of September, 1934.

ROBERT H. JACKSON
Assistant General Counsel,
for the Bureau of Internal Revenue,
Counsel for Respondent.

[Endorsed]: Filed Sept. 5, 1934. [35]

United States Circuit Court of Appeals for the
Ninth Circuit

.....Term, 1934

No.....

(Board of Tax Appeals)

(Docket No. 51636.)

G. M. STANDIFER CONSTRUCTION
CORPORATION, a corporation,
Petitioner and Appellant,

vs.

GUY T. HELVERING, Commissioner of Internal
Revenue,

Respondent and Appellee.

PRAECIPE FOR THE RECORD.

To the Clerk of the United States Board of Tax
Appeals:

YOU WILL PLEASE prepare and, within sixty
days from the date of filing of the petition for re-
view in the above entitled proceeding, transmit to
the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit, certified copies of
the following documents in the above entitled pro-
ceeding:

1. The docket entries of the proceeding before
the United States Board of Tax Appeals.
2. Pleadings before the Board.
3. Findings of fact and opinion of the Board,
promulgated March 27, 1934. [36]

4. Decision of the Board, entered June 7, 1934.
5. Petition for review and notice of filing thereof.
6. Stipulation of facts.
7. This praecipe and notice of filing thereof.

The foregoing to be prepared, certified and transmitted as required by law and the Rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this twenty-sixth day of September, 1934.

CHARLES E. McCULLOCH,
IVAN F. PHIPPS,

Counsel for Petitioner,
1410 Yeon Building,
Portland, Oregon.

[Endorsed]: United States Board of Tax Appeals.
Filed Sep. 26, 1934. [37]

[Title of Court and Cause.]

NOTICE OF FILING PRAECIPE.

To the above-named respondent and ROBERT H. JACKSON, Assistant General Counsel for the Bureau of Internal Revenue, attorney for respondent:

PLEASE TAKE NOTICE that on the twenty-sixth day of September, 1934, we shall file with the Clerk of the Board a praecipe designating the portions of the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, on the appeal taken in the above proceeding, a

copy of which praecipe is hereto annexed and herewith served upon you.

Dated this twenty-sixth day of September, 1934.

CHARLES E. McCULLOCH,
IVAN F. PHIPPS,

Counsel for Petitioner,
1410 Yeon Building,
Portland, Oregon.

Service of the foregoing notice and copy of praecipe is hereby accepted, and the filing of a counterpraecipe is hereby [38] waived. this twenty-sixth day of September, 1934.

ROBERT H. JACKSON,

Assistant General Counsel
for the Bureau of Internal Revenue,
Counsel for Respondent.

[Endorsed]: United States Board of Tax Appeals.
Filed Sep. 26, 1934. [39]

United States Board of Tax Appeals
Washington

Docket No. 51636

G. M. STANDIFER CONSTRUCTION
CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 39, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Prae-cipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 22nd day of Oct., 1934.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

[Endorsed]: No. 7662. United States Circuit Court of Appeals for the Ninth Circuit. *G. M. Standifer Construction Corporation*, Petitioner, v. *Commissioner of Internal Revenue*, Respondent. Transcript of the Record Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed October 29, 1934.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.